IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 8677 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHRIRAM S/O CHANDRASHEKHAR VENKATARAMAN

Versus

NARBEHRAM DODIA

Appearance:

1. Criminal Misc.Application No. 8677 of 2001

MR CR ABICHANDANI for Petitioner No. 1

MR Jagdish Mehta for Mr YOGESH S LAKHANI for Respondent No. 1

Mr V M Pancholi, APP for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 09/07/2003

ORAL JUDGEMENT

The petitioner hererin, has preferred this

petition under section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Code') for quashing a FIR being CR. No.I-468 of 2001 filed by respondent No.1 herein against the petitioner and other accused persons on 20.8.2001 for offence punishable under section 406 and 420 read with section 114 of IPC. It appears from the records that the first respondent had borrowed some amount from the Bank namely; Standard Chartered Bank, of which the petitioner is the Manager. The FIR shows that a car was purchased by the first respondent in a sum of Rs.2,12,539.40. It is also stated in the FIR that the first respondent was required to pay monthly instalment of Rs.5,310/-. That in all, the first respondent had paid 22 installments and 25 installments were yet to be paid. That on 1.12.2000, one Manish Patel, an officer of the said Bank in the company of another person, had approached the first respondent at about 9.30 p.m. at his residence and told the first respondent that his officer wanted to see the car of the first respondent. That therefore, the first respondent and those two persons went to the Mithakali branch of the said bank. That the petitioner was present there and he collected the key of the car from the first respondent. That thereafter, the petitioner asked the accompanying persons that the first respondent may be taken to his residence. At that time, as per the case of the first respondent, he declined to take the said services and went to his residence by rickshaw. Certain documents relating to the said car were lying in the said car. That the petitioner told him that he should forget everything about the car. That thereafter he came to know that the petitioner had sold out the car and thereby the petitioner and other accused persons have committed offence of cheating and criminal breach of trust and, therefore, the aforesaid FIR was filed by the first respondent on 20.8.2001. Feeling aggrieved by the said FIR, the petitioner being the Manager of the said Bank has preferred this petition before this Court under Section 482 of the Code. It has been contended here that there was a hire purchase agreement with the first respondent. That the first respondent did not pay up the installments and, therefore, in accordance with the terms and conditions of the said hire purchase agreement, the bank had taken possession of the vehicle in question from the first respondent and since the first respondent did not pay up the installments, the Bank had disposed of the said vehicle in accordance with the terms and conditions of the said hire purchase agreement. That therefore, the petitioner has not committed any offence and consequently the FIR does not disclose any offence and hence it is required to be quashed. The petitioner has, therefore,

prayed to quash the said FIR.

2. On receipt of the petition, notice was issued at the first instance and ad-interim relief in terms of para 5 (iii) was granted. Thereafter, rule was issued and the matter has been placed at the stage of final hearing. Accordingly it has been heard today.

3. On behalf of the petitioner, arguments were advanced by Mr C R Abichandani, learned Advocate and on behalf of the first respondent arguments were advanced by MR Jagdish Mehta. Mr V M Pancholi, learned APP argued the matter on behalf of the State supporting the arguments advanced on behalf of the petitioner. The petitioner has contended that there was an agreement of hire purchase and accordingly the advance was granted to the first respondent. This fact was not seriously disputed during the course of argument. It has also been contended by the learned advocate for the petitioner that the amounts were due to the Bank by the first respondent. It has also been contended that though the first respondent had paid some amount by way of cheque, the cheques were not honoured and, therefore, a huge amount was due to the bank by the first respondent. It seems that even this fact cannot be seriously disputed because the petitioner has submitted at page No.63, Annexure 'F', list of cheques which had bounced from the bank. The said list shows that the bouncing of cheque started in July, 1999. It went on in October, 1999 and again in December, 1999 and so on. This shows that so many cheques had bounced and, therefore, when the cheques had bounced, it cannot be said that the payments were made by those cheques. The above facts make it clear that huge amount was due in December, 2000 and, therefore, it seems that the petitioner bank had taken possession of the vehicle in question. Learned Advocate for the first respondent has argued that the vehicle was not taken possession of but the Manager had taken possession fraudulently. In reply to the same, learned Advocate for the petitioner has drawn my attention to page no.17 which clearly shows that the vehicle was taken possession of by the bank and the first respondent had placed his signature on the document at page no.17. Learned Advocate for the first respondent has not disputed the signature of the first respondent on the said document at page no.17. An argument has been advanced that the signature of the first respondent was obtained on plain papers. The first respondent is after-all a man in business and it is not acceptable for the purpose of this petition, that his signatures were obtained on blank papers. Page No.18 also bears signature of the first

respondent and there is no dispute about the same. This shows that the possession of the car was taken by the bank under relevant documents. It, therefore, cannot be said that the petitioner in his personal capacity had fraudulently taken away possession of the said vehicle. Now, it is the argument of the petitioner that as per the terms and conditions of the hire purchase agreement, as soon as the first respondent become a defaulter, the bank of the petitioner was at liberty to take possession of the vehicle in question. Now once the vehicle has been taken possession of in accordance with the agreement, it cannot be said that there is some fraudulent act on the part of the Manager of the Bank. There is no question of cheating also because the possession of the vehicle has been taken in accordance with the agreement contained in the hire purchase agreement. In this connection, learned Advocate for the petitioner as well as learned APP have relied upon a decision of Hon'ble Supreme Court in the case of Charanjit Singh Chadha v. Sudhir Mehra, reported in 2001 SCC (Cri.) 1557. There also the Finance company had taken possession of the vehicle on account of default in making payment of installments. There it was held that it was not a question of any offence and repossession of the vehicle taken by the financier in exercise of their right under the agreement would not amount to theft as the vital element of dishonest intention is lacking. Once it is found that in such an event dishonest intention is lacking, then there is no question of any criminal misappropriation and cheating also since in both those offences the above element of dishonest intention is a sine quo non. In above view of the matter when the vehicle has been taken possession of in accordance with the agreement on account of non-payment of instalments, then no offence can be said to have been made out. Learned Advocate for the first respondent has argued that the first respondent was ready and willing to pay the installments and the installments have been paid in large sum and, therefore, the bank was not at liberty to dispose of the vehicle in question. The facts are otherwise. Though the cheques were sent, many cheques have bounced and therefore, large amount was due at the relevant point of time. Therefore, it appears that the bank was justified in disposing of the vehicle of the first respondent. Learned advocate for the first respondent states that only three installments were due at the relevant point of time. Even according to the agreement between the parties, it was not necessary for the bank to wait for default in making payments of two or more installments. Therefore, even if we take it that only three installments were due, then as per the terms and conditions of the agreement, the petitioner bank was

at liberty to repossess the vehicle in question. There the facts remain that there is no question of dishonest intention on the part of the petitioner and, therefore, in absence of such an intention, offence punishable under section 406 or 420 of IPC cannot be said to be made out and consequently no offence is made out prima facie, on a bare reading of the FIR. To permit continuation of the investigation on the basis of such FIR, would be abuse of process of Court or abuse of process itself and consequently it is necessary in the interest of justice that the FIR is quashed.

4. For the foregoing reasons, this petition is allowed. The FIR being CR.I-468/2001 registered before the Navrangpura police station dated 20.8.2001 at page 13, Annexure 'A' is ordered to be quashed and set aside. Rule is made absolute. D.S. permitted.

[D P Buch, J.]
msp